

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1344 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

DEVIBEN KUMARBHAI JAYKIRTI

Versus

DINKARRY CHHOTALAL BHATT

Appearance:

MR AJ PATEL for Petitioners

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/07/97

ORAL JUDGEMENT

1. This Civil Revision Application is filed by original plaintiffs against the respondent landlord under Sec. 115 of the Code of Civil Procedure.
2. The petitioners filed HRP Suit No. 2198 of 1991 against the respondent in the Court of Small Causes at Ahmedabad on or about 21st October, 1991 and, inter alia,

claimed that the premises situate at Vijay Park Co-operative Housing Society Limited, Bungalow No.6, 1st Floor, bearing Municipal Census No. 53/2/6/5, 53/2/6/3, and Survey No. 45/A/6/5 and 45/A/6/3, kitchen and drawing room were in possession and enjoyment of the plaintiff No.1 Deviben Kumarbhai Jaykirti. On the aforesaid averment, an application for interim injunction was also moved, inter alia, alleging that on the first floor, a bed room, a kitchen, a veranda and closed gallery and bath room and lavatory were leased to the plaintiffs in June 1964 and the rent was being given at the rate of Rs.. 170/-. Various other averments were made in the plaint and application for temporary injunction was moved under Order 39 of the C.P. Code. Even a rent receipt allegedly issued by the respondent dated 12th July, 1970 was also produced. On the basis of the aforesaid evidence, an injunction was sought that no one should be permitted to use veranda in question on the first floor and that every one should be restrained from parking any vehicle on the ground floor as that would amount to violation of the terms and conditions of the tenancy. It appears that initially, ad interim injunction was granted by the trial court. However, the application was resisted by the landlord on various ground and after hearing both the parties and considering affidavit evidence as well as documentary evidence, the trial court vacated the ad interim injunction granted earlier by judgment and order dated 7th of February, 1992.

3. Being aggrieved by the aforesaid judgment and order, the petitioner preferred Appeal From Order No. 19 of 1992 before the appellate bench of the Small Causes Court at Ahmedabad which dismissed the appeal on 20th August, 1992 against which the present Civil Revision Application is filed.

4. Mr. A.J. Patel, learned counsel appearing for the petitioners plaintiffs vehemently urged before this court that, *prima facie*, case of tenancy was made out with respect to the suit premises both by affidavit evidence as well as by documentary evidence and consistent with the principle of Order 39 Rule 1 & 2 of the Civil Procedure Code, the interim injunction ought to have been granted and both the courts below erred in refusing the minimum interim injunction which was prayed for.

5. Mr. V.C. Desai, learned counsel appearing for the respondent on the other hand submitted that when two courts have concurrently found that plaintiff has failed

to prove the *prima facie* case and has also failed to prove that balance of convenience was in his favour or that irreparable loss will be caused to him if the injunction as prayed for is granted than to the defendant, the High Court should be loath to interfere with under Sec. 115 of the Code of Civil Procedure.

6. Having given my anxious thought to the rival submissions of both the parties and more particularly the principle of law propounded by the Apex Court in the case of HINDUSTAN AERONAUTICS v. AJIT PRASAD reported in 1973 SC 76, no jurisdictional error is pointed out which would call for interference of this court under Sec. 115 of the Code of Civil Procedure. Even no irregularity is pointed out which would touch the jurisdiction of the either court calling for the interference of this court under Section 115 of the Code of Civil Procedure.

7. In the result, this Civil Revision Application must fail. The same is dismissed. Rule is discharged. Interim relief stands vacated. There shall be no order as to costs. It is, however, clarified that none of the observations made in this judgment or judgment of the lower courts shall bind the trial court at the time of finally deciding the suit on merits.

pnn